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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-5799

THE ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC.; CATHERINE BODDIE; ADREANA SHOULTZ and GLADYS MILNER, Individually and on behalf of themselves and their minor children and all others similarly situated,

Petitioners,

v.

FRANCIS SCHRECK, Individually and as Commissioner of the Albany County Department of Social Services; ANTHONY JAY, Individually and as Deputy Commissioner of the Albany County Department of Social Services; and GEORGE K. WYMAN, Individually and as Commissioner of the New York State Department of Social Services,

Respondents.

BRIEF OF RESPONDENT STATE COMMISSIONER OF SOCIAL SERVICES IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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PETITION NOT PRINTED

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THE ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC.; CATHERINE BODDIE; ADREANA SHOULTZ and GLADYS MILNER, Individually and on behalf of themselves and their minor children and all others similarly situated,

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Respondents.

BRIEF OF RESPONDENT STATE COMMISSIONER OF SOCIAL SERVICES IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

Preliminary

Petitioners offer "three major reasons" why certiorari is warranted in this case (Brief, p. 11).

Their first is that the decision below "* * * has determined an important question of federal law by its interpretation of the Social Security Act". Our position as to this is that the United States Court of Appeals (Second Circuit) discussed *only* the question of whether petitioner Center, not a beneficiary under

the Social Security Act, had a right to have children referred to it within the jurisdictional requirements of 28 U.S.C. § 1331 and that it could not and did not reach the Federal statutory claims of the other plaintiffs (petitioners here).

The second reason advanced by petitioners for the granting of certiorari is that "* * * the decision below, insofar as it held that petitioners' First Amendment claim was not sufficiently pleaded to state a claim of relief, conflicts with several explicit decisions of this Court pertaining to the standard to be used in testing the sufficiency of a complaint * * *". Our position as to this contention is that the complaint patently was insufficient.

A final reason advanced by petitioners is that "* * * the proceedings below were such a departure from usual practice as to call for this Court's supervisory intervention * * *". As to this contention petitioners seek summary disposition vacating and remanding the judgment below "with instructions to permit an amendment to the complaint within a reasonable period of time" (Brief, p. 27). As to this our position is, as shown by our brief addressed to the first and second "reasons", that the decision below was correct in all respects and summary disposition is not warranted.

Statement of the Case

This case arises out of a dispute between petitioner day care center and respondent county officials over the refusal of such county officials to place children in petitioner corporation's day care center because of their opinion that the Center's executive director, petitioner Boddie, was unqualified to be such director. Petitioners generally seek an order requiring the county officials to use the facilities of the Center and to have the State Commissioner compel the County officers to use such facilities.

The respondent State Commissioner's position as to the ultimate relief sought as to him is that there are no Federal or State regulations that either require a local Commissioner of

Social Services to purchase day care services from a *particular* center or provide the State Commissioner with authority to force him to do so.

The Complaint* alleges that on or about September 1, 1971, the Albany County Legislature appropriated day care funds for petitioner's day care center for the period commencing January 1, 1972 and ending December 31, 1972, subject to State approval of the Center's facility.

On or about September 1, 1971, respondent Schreck is alleged to have notified Sharon Conrad, the then acting director of the day care center, by letter, of such action of the County Legislature. That letter, a copy of which was attached to the complaint as Exhibit "A", stated "Best wishes in your application for a State license."

On December 21, 1971, the center received its Certificate of Incorporation and approval to operate a day care center from the New York State Board of Social Welfare**, and on that day petitioner Boddie, who had become the Center's Director, informed the Albany County Social Services Department through respondent Jay of the action of the State Board of Welfare.

On December 31, 1971, the New York State Department of Social Services issued its permit to the center to operate a day care center facility for 20 children.

It is alleged that on January 6, 7 and 10, 1972 petitioner Boddie and employees of the center staff met with Albany County social services officials demanding placement of children in the center.

On January 6, 1972, the center's temporary chairman was told in a telephone conversation with respondent Schreck that

*For the Court's convenience, a copy of complaint is annexed hereto as Appendix A.

**Established pursuant to the New York State Constitution and separate and distinct from the State Department of Social Services.

respondent Schreck did not believe petitioner Boddie to be qualified to be the director of the center, and that as long as she continued as director, no children would be referred or placed in the center. On January 10, it is alleged that petitioner Boddie had a similar conversation with respondent Schreck.

The complaint alleged as follows:

> "14. Upon information and belief, the actions of defendants SCHRECK and JAY as aforesaid are in retaliation for plaintiff BODDIE's activities in organizing the Albany Welfare Rights Organization, in asserting the claims of its members and in promoting the interests of the Albany Welfare Rights Organization through speech."

The only allegations contained in the complaint as to the State Commissioner are those set forth in paragraph 6 concerning licensing of the day care center on December 31 and in paragraph 8 concerning the alleged basis upon which the New York State Department of Social Services acted when it licensed the center. Finally, paragraph 19 alleges that a telegram was sent to the State Commissioner on January 11, 1972.*

There are three categories of plaintiffs (petitioners here): (1) the Albany Welfare Rights Organization Day Care Center, Inc., (2) Catherine Boddie, the executive director of the center, and (3) Adreana Shoultz and Gladys Milner, individually and on behalf of themselves and their minor children and all others similarly situtated. Generally, First Amendment and Fourteenth Amendment violations are claimed, but not all claims are made as against all defendants (respondents here). Additionally claims involving the Social Security Act were asserted.

Although petitioner Boddie alleges that she is a recipient of public assistance under the Aid to Families with Dependent

*George K. Wyman, Commissioner of the New York State Department of Social Services, a named defendant, has been succeeded in office and function by Abe Lavine.

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Children Program, she does not sue as a recipient of public assistance, but sues as one seeking to enforce an asserted right to employment. The petitioner mothers are also alleged to be recipients of public assistance under such program.

All plaintiffs (petitioners here) asserted jurisdiction under 28 U.S.C. § 1343 (3) (4)*, implementing 42 U.S.C. § 1983. Additionally, the corporate plaintiff (petitioner here) asserted jurisdiction of its property claims under 28 U.S.C. § 1331.

The action was commenced in the District Court for the Northern District of New York by service of a summons dated January 13, 1972 upon the State Commissioner of January 14, 1972.

The State Commissioner moved to dismiss the complaint upon the grounds (1) that the complaint failed to state a claim against the State Commissioner upon which relief can be granted, (2) lack of jurisdiction of the subject matter, (3) lack of jurisdiction of the person and (4) lack of standing. A parallel motion to dismiss was made by the County defendants (respondents here).

After the District Court granted the motions to dismiss, the Court of Appeals Second Circuit affirmed on June 9, 1972, and petitioners' motions for rehearing and for hearing by an *en banc* Court were denied on August 2, 1972.

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*Reliance upon section 1343 (4) was misplaced because it has been held that the Social Security Act is not one "providing for the protection of civil rights" (*McCall* v. *Shapiro*, 416 F. 2d 246 at 249 (2d Cir., 1969); *Almenares et al.* v. *Wyman, et ano.*, 453 F. 2d 1075 (2d Cir., December 10, 1971), certiorari den. 405 U.S. 944 (1972)). It has been further held as to section 1343 (3) jurisdiction that the Social Security Act is not an "Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States. cf. *Rachel* v. *Georgia*, 384 U.S. 780, 792 (1966); *City of Greenwood* v. *Peacock*, 384 U.S. 808, 825 (1966)." *Almenares et al.* v. *Wyman, supra.* Compare *King* v. *Smith*, 392 U.S. 309, 312, n.3 (1968), *Rosado* v. *Wyman*, 397 U.S. 397, 405, n.7 (1970).

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Question Involved

Does the complaint state a claim upon which relief can be granted?

Opinions Below

Decision and Order of the District Court (unreported)

Judge Foley, in his decision, while touching upon Mr. Justice Stone's test of "personal liberty" (*Hague* v. *Committee for Industrial Organization*, 307 U.S. 496 (1939); *Eisen* v. *Eastman*, 421 F. 2d 560 [2nd Cir., 1969], cert. den. 400 U.S. 841 and *Tichon* v. *Harder*, 438 F. 2d 1936 [2nd Cir., 1971])* clearly grounded his decision upon the failure of plaintiffs to show that they had been deprived of rights secured by the Constitution.

After finding that the claim of retaliation, made only as to the County officers, was conclusory and unsupported in every respect; that the attitude of Commissioner Schreck in his prior dealings with the Center was "totally inconsistent with any claim of retaliation or inhibition of any kind against the members of the Organization" and its purposes and that there was no basis for section 1343 (3) jurisdiction, Judge Foley stated as to the State Commissioner:

> "It is impossible, if there were enough substance in the claims against the local Commissioners, to find any violation by Commissioner Wyman who in good faith issued the permit in accord with State and federal law and regulations."

He went on to say, as to the County officers:

> "The most I gain from the allegations against the local Commissioners is an exercise of either an unsupported judgment that may be erroneous or beyond their power, but in no respect affording the basis for claims that rise to the stature of federal constitutional rights or law

*See *Lynch* v. *Household Finance Corporation*, 405 U.S. 538 (1972).

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violations. The dispute is one that is local in nature, and involves a problem in my judgment to be corrected by internal administrative procedures or directives."

Judge Foley was also of the opinion that *Eisen* v. *Eastman*, *supra*, furnished a "formidable barrier" in regard to the necessity for exhaustion of administrative remedies as a precondition to acceptance of jurisdiction by a Federal court. He also indicated that he would have abstained until the State Courts had acted if he was in error concerning jurisdiction.

As to the claim of the corporation under 28 U.S.C. § 1331, he held that it did not meet the jurisdictional amount requirement.

Judge Foley stated that "This controversy in reality and in its nature affects in my judgment only one individual claimant, Mrs. Boddie, i.e., her right to be Executive Director."

Judge Foley granted the separate motions made by the County officers and Commissioner Wyman on the specific ground of lack of subject matter jurisdiction and dismissed the complaint in its entirety.

Opinion of the Court of Appeals (Reported at 463 F. 2d 620)

By a divided Court, the Court affirmed the determination of the District Court dismissing the complaint. The Court reviewed the constitutional claims of the parties and found that the complaint failed to allege facts sufficient to state claims upon which relief can be granted.

As to the allegation of retaliation, it held that the facts alleged in the complaint are insufficient as a matter of law to state a claim for relief under 42 U.S.C. § 1983 and 28 U.S.C. § 1343 (3); that the allegations thereof were conclusory and presented no facts to support the allegations of retaliation.

The Court further decided, as to 28 U.S.C. § 1331 jurisdiction alleged by the Center only, that no federal question was presented since the Court found that the Center had no Federal

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right to have eligible children referred to it by Social Services officials for day care services.

Reasons for Denying Certiorari

A

Petitioners misconstrue the opinion of the Court of Appeals with respect to the applicability of the Social Security Act to the case at bar.

The Court discussed *only* the question of whether the *Center* had a *Federal* right to have children referred to it within the jurisdictional requirements of 28 U.S.C. § 1331. It could not reach the Federal statutory claims of the other plaintiffs (petitioners here) who asserted jurisdiction only under 28 U.S.C. § 1343 (3) (4) unless it found their constitutional claims to be substantial and well pleaded. While the Court delineated all of the constitutional claims of all of the plaintiffs (pp. B-4 and 5 annexed to the petition), it disposed of petitioner Boddie's constitutional claim as being insufficiently pleaded and it was obviously of the opinion that the other constitutional claims were insubstantial. Since the Federal claims of Mrs. Boddie and of the mothers relating to the Social Security Act were necessarily pendent to their constitutional claims, *their* Federal claims were not reached.

What the Court said was:

> "The substantive rule of law which allegedly entitles the Center to have eligible children referred to it because a state agency has determined it to be qualified, is, if it exists at all, a product of New York state law, not the Social Security Act." (B-8 annexed to the petition.)

The issue decided by the Court of Appeals was not "the question of whether or not plaintiffs were entitled to relief under the Social Security Act" (Petition, p. 10), but rather whether *the*

Center had met the jurisdictional requirements of 28 U.S.C. § 1331.

In this regard, we quote from pages 17 and 18 of our brief in the Court of Appeals:

> **"The appellant corporation does not raise a substantial constitutional claim as to Commissioner Wyman.**
>
> "The facts alleged in the complaint in support of the appellant coropration's claim for relief do not raise a substantial constitutional claim.
>
> "The essential facts alleged are merely that appellant corporation has been granted a permit to operate a day care center in Albany County, that the County Legislature has appropriated certain funds for day care services and that the County officers have not yet referred children to the corporation for day care service. The complaint nowhere either alleges or establishes the source of the constitutional rights allegedly violated.*
>
> "Appellants point to no statute granting such right, and the common law does not confer such a right. What the corporate appellant seeks is to have this Court compel the appellee County officers to enter into a contract with it under claim of alleged constitutional violation. It is submitted that the complaint does not demonstrate that appellant corporation has a right under any State of Federal law to the benefits which might accrue to it if the County officers were to enter into such a contract. Rather, the complaint merely asserts that the County officer's failure to contract denies some abstract right to such a contract. The various statutes and regulations cited by appellants contain nothing which compel the County to purchase day care services from any day care organization merely because it has been issued a permit.

---

* "This source could not be the Social Security Act, 42 U.S.C. § 601, et seq., since that title (Aid to families of dependent children) was not enacted for the benefit of the appellant corporation. * * *"

> "The Constitution itself certainly does not compel a contractual relationship, nor is such a relationship a civil right.

As regards the Federal claim of the Center, therefore, it cannot be said that the State Commissioner did not take a position below as its statutory claims, as well as its constitutional claims, contrary to the statement of petitioners in their petition for a writ of certiorari.

What petitioners seek is to have the State Commissioner of Social Services force a County Commissioner to use a day care center in the face of the County officers' reservations as to the qualifications of the Center's director. (See affidavit of Commissioner Schreck, sworn to January 26, 1972.)

At the hearing before Judge Foley on February 9, 1972, counsel for the State Commissioner described the manner in which a day care center grows from an idea to a reality (see Appendix, pp. 99a et seq.). He pointed out the involvement of the local Social Services officials at an early stage in the formation of a Center and such officials' consideration of matters of financing, staffing, and the like.

It was not until County Commissioner Schreck found out in December of 1971 that Mrs. Boddie, rather than Sharon Conrad, was to be executive director of the Center that he said he would refer no children to it. This action of his does not involve any action of the State Commissioner of Social Services or of his then Area Office which approved Mrs. Boddie to be the director, but obviously involves a state of fact which predated such approval and which constituted a premise for the cooperation of the Albany County Commissioner of Social Services for the establishment of the Center in the first place.

Under these circumstances any intervention by the State Commissioner, even if authorized, would have been inappropriate.

Far from lending "* * * comfort to those local officials who wish to implement their own views as to appropriate social, political or fiscal policy" (Petition, p. 16), the decision of the Court of Appeals is merely supportive of the role of the local Commissioner in the establishment of day care centers, vendors of a specialized type of service, and does not involve any so-called issue of uniformity or lack of uniformity under the Social Security Act. (42 U.S.C. § 602 (a).)

B

Petitioners argue that "In the face of clear interpretation by this Court of the pleading requirements of the Federal Rules, the Court below dismissed petitioners' First Amendment claims on the basis that they were 'mere conclusory allegations' " (Brief, p. 19). Petitioners argue that the Court has applied a more vigorous standard of pleading to the case at bar than would otherwise be applied; and point to what they believe to be a difference of opinion among the Circuits in construing a complaint framed under 42 U.S.C. § 1983. We submit, however, that the analysis of the complaint adopted by the Court below is correct under rules of pleading generally applicable to every case.

The Court below held (Appendix B-5, 463 F. 2d 620 at 623):

> "The complaint in the instant action presents no facts to support the allegation that the refusal to refer children was in retaliation for Boddie's organizing activities. It appears from the complaint that Boddie 'is Chairwoman of the Upstate Welfare Rights Organization and is Treasurer of the Albany Welfare Rights Organization.' However the complaint does not suggest any reason to believe that there was any connection between Boddie's official position in the welfare rights groups and appellees' refusal to refer children to the Center. In fact, according to the complaint, appellee Schreck told plaintiff Boddie and the Chairman of the Board of the Center that the reason children would not be referred was because Schreck did not believe Boddie to be qualified to direct a day care center."

The only allegation of retaliation contained in this complaint is that set out at paragraph 14 of the factual allegations thereof. And that allegation is made not upon knowledge but only upon information and belief without specifying the sources of petitioners' information and belief.

The complaint contains no fact supportive of the bare allegation of retaliation but leaps to a conclusion premised only upon what the petitioners assume to be the case. We submit that a complaint based upon such assumption is insufficient.

Of a certainty it may be said that if a complaint does not state the elements of the claim, that complaint is insufficient. (See 2A, Moore Federal Practice § 8.13, p. 1700.)

The allegations of the complaint do not back up a claim for retaliation. On the contrary they furnish reason why the claim of retaliation is groundless, i.e. that Commissioner Schreck stated that he would not place children in the Center because Mrs. Boddie was not qualified to be the director thereof. This allegation is completely at war with any claim of retaliation and we submit that it was incumbent on petitioners to show more than they did.

CONCLUSION

For the foregoing reasons, the petition for a Writ of Certiorari should be denied.

Dated: Albany, New York
January 8, 1973

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondent State
Commissioner of Social Services

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APPENDIX A — COMPLAINT.

[2a]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

THE ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC.; CATHERINE BODDIE; ADREANA SHOULTZ and GLADYS MILNER, Individually and on behalf of themselves and their minor children and all others similarly situated,

Plaintiffs,

-against-

FRANCIS SCHRECK, Individually and as Commissioner of the Albany County Department of Social Services; ANTHONY JAY, Individually and as Deputy Commissioner in the Albany County Department of Social Services; and GEORGE K. WYMAN, Individually and as Commissioner of the New York State Department of Social Services,

Defendants.

Civil Action No. 72-CU-31

I

PRELIMINARY STATEMENT

1. This is a civil rights action under 42 U.S.C. Section 1983 and the Fourteenth Amendment to the United States Constitution for damages and injunctive and declaratory relief and is being brought against defendant officials of the Albany County Welfare Department and defendant WYMAN of the New York State Department of Social Services for the purpose of securing rights, privileges, and immunities established and protected by the First and Fourteenth Amendments to the Constitution of the United States and by the Social Security Act, 42 U.S.C. §602(a), §606(d) and the regulations promulgated thereon. Plaintiffs also seek injunctive and declaratory relief and damages

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based upon their pendant state claims under New York State Social Services Law Sections 17, 410 and 18 New York Code Rules and Regulations, Sections 369.10 and 8.18. As more fully set forth hereinafter, defendants SCHRECK and JAY have violated said rights, privileges and immunities in that as Albany County Commissioner and Deputy Commissioner of Welfare they are refusing and failing to refer children to the Albany Welfare Rights Organization Day Care Center, Inc. (A.W.R.O. Day Care Center, Inc.) a facility licensed and approved by the New York State

[3a]

Department of Social Services, so long as plaintiff CATHERINE BODDIE is the Executive Director of the A.W.R.O. Day Care Center, Inc. Defendants SCHRECK and JAY are taking this action in retaliation for her First Amendment rights to speak, organize and seek redress of grievances.

Defendants SCHRECK and JAY are depriving plaintiffs of their First Amendment rights, and equal protection and due process of the Laws as provided in the Fourteenth Amendment to the United States Constitution.

Defendant WYMAN is acting in violation of the Social Security Act, federal regulations, First and Fourteenth Amendments to the United States Constitution and New York State Social Services Law in that he is failing to supervise and administer services in a uniform and non-discriminatory manner under 42 U.S.C. §602(a), §606(d); 45 C.F.R. §220.18, §220.2, §220.47, §220.51, §220.52, §220.55, §220.56, §226.1(a)(5); and Sections 17 and 410 of the New York State Social Services Law and 369.10 and 8.18 of Title 18 New York State Code, Rules and Regulations (NYCRR). He is denying plaintiffs rights, privileges and immunities established and protected under the First and Fourteenth Amendments.

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II

JURISDICTION

Jurisdiction of the claims of the individual plaintiffs and of the claims of the corporate plaintiff is conferred upon this Court by virtue of 28 U.S.C. 1343 (3) and (4), which provide for original jurisdiction of this Court in all suits authorized by 42 U.S.C. Section 1983 to redress the deprivation under color of state law of any right, privilege or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal rights or for the civil rights of all persons within the jurisdiction of the United States.

[4a]

Jurisdiction of the property claims of the corporate plaintiff is also conferred upon this Court by virtue of 28 U.S.C. Section 1331 which provides for original jurisdiction of this Court in all suits arising under the Constitution and laws of the United States, in which the amount in controversy exceeds $10,000.

Plaintiffs' action for declaratory relief is authorized by 28 U.S.C. Sections 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure.

III

PLAINTIFFS

1. Plaintiff, ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. (A.W.R.O. Day Care Center, Inc.) is a Not-For-Profit Corporation as defined in Section 102(a)(5) of the New York State Not-For-Profit Corporation Law. It has a principal office at 15 Trinity Place, Albany, New York and principally does business in the County of Albany in New York State. The general purpose for which the Corporation was formed is to establish, maintain and operate day care centers in the County of Albany.

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2. Plaintiff, CATHERINE BODDIE, resides in the City of Albany, County of Albany, State of New York and is a recipient of public assistance under the program Aid to Families with Dependent Children for herself and her eight minor children. She is the Executive Director of the A. W. R. O. Day Care Center, Inc. She is Chairwoman of the Upstate Welfare Rights Organization and is Treasurer of the Albany Welfare Rights Organization. [5a]

3. Plaintiff, ADREANA SHOULTZ, resides in the City of Albany, County of Albany, State of New York and is a recipient of public assistance for herself and her three minor children under the program Aid to Families with Dependent Children.

a. Melissa Shoultz, age 4 and Regina Marie Shoultz, age 2 years and 10 months, are the children of plaintiff SHOULTZ and are to be enrolled in a day care facility.

4. Plaintiff, GLADYS MILNER, resides in the City of Albany, County of Albany, State of New York and is a recipient of public assistance for herself and her three minor children under the program Aid to Families with Dependent Children.

a. San Jose Milner age 3 years, ia a child of plaintiff MILNER and is eligible to be enrolled in a day care facility.

IV

DEFENDANTS

1. Upon information and belief, defendants are all citizens of the United States and of the State of New York.

2. Defendant FRANCIS SCHRECK is the Commissioner of the Albany County Department of Social Services and in such capacity is supposed to direct and supervise the said department.

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3. Defendant ANTHONY JAY is the Deputy Commissioner of the Albany County Department of Social Services and in such capacity directs and supervises the said department when defendant SCHRECK is not present in the department.

[6a]

4. Defendant GEORGE K. WYMAN, as Commissioner of the New York State Department of Social Services is charged by New York State Social Services Law Section 34 with primary responsibility for administering the programs of public assistance and services to exercise general supervision over the work of all local welfare authorities.

V

CLASS ACTION

The named plaintiffs bring this action on their own behalf and pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, on behalf of all other persons similarly situated. The members of the class similarly situated, represented by plaintiff SHOULTZ and plaintiff MILNER are all persons entitled or who may become entitled under the New York State Social Services Law, Rules and Regulations to place their children in a licensed or approved day care center in Albany County. The members of the class similarly situated, represented by the children of plaintiff SHOULTZ and plaintiff MILNER are all persons entitled or who may become entitled under the New York State Social Services Law, Rules and Regulations to be placed in a licensed or approved day care center in Albany County.

VI

FACTUAL ALLEGATIONS PERTAINING TO THE CLAIMS OF PLAINTIFFS

1. That on or about September 1, 1971 the Albany County Legislature appropriated day care funds for the

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A. W. R. O. Day Care Center, Inc. at the rate of $36.85 per week per child for 33 children for the period commencing January 1, 1972 and ending December 31, 1972, subject to the approval of the New York State Department of Social Services, of the A. W. R. O. day care facility.

[7a]

2. That on or about September 1, 1971 defendant SCHRECK notified Sharon Conrad, who was then Acting Director of A. W. R. O. Day Care Center, Inc., by letter of the aforesaid action of the Albany County Legislature, a copy of the letter is annexed as Exhibit "A".

3. Plaintiff, ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. a Not-For-Profit Corporation as defined in Section 102(a)(3) of the New York State Not-For-Profit Corporation Law received its certificate of incorporation and approval to operate a day care center on December 21, 1971 from the New York State Board of Social Welfare, pursuant to New York State Executive Law §747, and §402 of the New York State Not-For-Profit Corporation Law. A copy of the State Board of Social Welfare approval is annexed to the complaint as Exhibit "B".

4. On December 21, 1971 Plaintiff BODDIE notified the Albany County Welfare Department by personally informing defendant JAY that approval to operate a day care center was issued by the State Board of Social Welfare and the Day Care Center would open for 20 children, ages 3-5 on January 3, 1972.

5. That on December 27, 1971 plaintiff BODDIE met with Albany County Welfare officials and offered to assist the Welfare Department staff in recruiting children to be placed in the A. W. R. O. Day Care Center, even though there was a waiting list of more than 500 children who needed day care facilities.

6. On December 31, 1971 the New York State

Department of Social Services pursuant to New York State Social Services Law § 390, 18 NYCRR § 8.2, § 12.4, upon determining that the staff and facilities met all the qualifications and requirements of the New York State Social Services Laws, Rules and Regulations and that there was established a definite need for day care facilities in the area served by the A. W. R. O. Day Care Center, Inc., issued the Albany Welfare Rights

[8a]

Organization Day Care Center, Inc. a permit to operate a day care facility for 20 children. A copy of the permit is annexed to the complaint as Exhibit "C".

7. That the Albany Welfare Rights Organization Day Care Center, Inc. is a unique day care facility in that it is the only day care center in New York State that is solely operated by welfare recipients and who are also members of a welfare rights organization. It is the first attempt by welfare recipients to engage in an activity which utilizes the free enterprise system which is a hallmark of our democratic system of government.

8. That the New York State Department of Social Services when it licensed the A. W. R. O. Day Care Center did so on the basis that the Executive Director, plaintiff BODDIE met all the qualifications under law to be a day care director, and that there was a definite need established for day care facilities in the geographic area served by the A. W. R. O. Day Care Center, Inc.

9. Upon information and belief, the new welfare work programs in Albany County for welfare recipients have not functioned properly because of the lack of adequate day care facilities.

10. On January 6, 7 and 10, 1972 plaintiff BODDIE and employees of the day care center staff met with Albany County Welfare Department Officials and defendant JAY, demanding placement of 20 children between 3-5 years of

age. Defendants SCHRECK and JAY have refused and failed and continue to refuse and fail to refer, place or pay for any children in the A. W. R. O. Day Care Center, Inc.

11. Upon information and belief in Albany County there is a waiting list of over 300 children eligible to receive day care services. Reliable Albany County officials have stated that if defendants SCHRECK and JAY had given permission to use the A. W. R. O. Day Care Center, Inc. that on January 3, 1972, 20 children between the ages of 3-5 could have been placed in the Center because there is a waiting list for day care in Albany County.

[9a]

12. On January 6, 1972, Michael Nardolillo, Director of the Trinity Institute and Chairman pro tem, of the A. W. R. O. Day Care Center, Inc. Board of Directors, telephoned defendant SCHRECK to find out why the Albany County Welfare Department was refusing to refer children to the A. W. R. O. Day Care Center, Inc. Defendant SCHRECK related that he did not believe Plaintiff BODDIE was qualified to be the Director of the Day Care Center and that as long as she continued as Director, no children would be referred or placed in the A. W. R. O. Day Care Center, Inc. An Affidavit of Michael Nardolillo is annexed to the Complaint as Exhibit "D".

13. On January 10, 1972 Plaintiff BODDIE telephoned Defendant SCHRECK to find out directly why he refused to refer children to the A. W. R. O. Day Care Center. Defendant SCHRECK then related to Plaintiff BODDIE that he did not believe she was qualified and that as long as she remained as Director of the Day Care Center that he would not refer any children for placement.

14. Upon information and belief, the actions of defendants SCHRECK and JAY as aforesaid are in retaliation for plaintiff BODDIE's activities in organizing the Albany Welfare Rights Organization, in asserting the claims of its

members and in promoting the interests of the Albany Welfare Rights Organization through speech.

15. Upon information and belief, all other day care centers in Albany County obtain eligible children through a combination of the following: (1) referral from the Albany County Department of Social Services; and (2) the recruitment activities of the staff and the supporters of the day care center. When eligible children are recruited directly by the day care center, its staff or supporters, it is the policy of the defendants that the children are first to be certified eligible by the Albany County Department of Social Services, and then referred back to the day care center for acceptance.

[10a]

16. That at all times since January 3, 1972, defendants SCHRECK and JAY have failed or refused to place children in the A.W.R.O. Day Care Center for the purpose of obtaining the removal of plaintiff CATHERINE BODDIE as Director of the said Day Care Center.

a. That since January 3, 1972 plaintiff BODDIE and the A.W.R.O. Day Care Center have been employed full time at the A.W.R.O. Day Care Center, Inc.

b. That since January 3, 1972 plaintiff ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. has been ready, willing and able to furnish day care services to 20 eligible children.

c. That since January 3, 1972, as a result of defendants' action, plaintiff ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC., has had no funds with which to pay its employees and the day care staff have received no wages from plaintiff ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC.

d. That one full time employee of plaintiff ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. has been forced to quit because of the lack of funds to pay salaries to the staff.

e. That Plaintiff ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. is already in debt for purchase of equipment, repairs on the facility, and purchase of services to run the day care center; which was all allocated in the budget approved and appropriated by the Albany County Legislature.

f. That since accepting San Jose Milner, Melissa Shoultz and Regina Maria Shoultz, plaintiff ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. has provided full day care services for the said children.

[11a]

g. That although the Albany County Legislature appropriated $63,234.60 for plaintiff ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC., this plaintiff will be entitled to receive only $38,240.00 in the year 1972, by reason of the fact that it was licensed to handle 20 children per week instead of 33 children per week.

17. On January 10, 1972 plaintiff SHOULTZ applied to the ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. for placement of her two minor children Melissa, age 4 years and Regina Marie, age 2 years and 10 months. The Shoultz children were accepted at the A.W.R.O. Day Care Center. Plaintiff SHOULTZ then notified the Albany County Welfare Department that she desired to place her children in an approved and licensed day care center in order to seek gainful employment. She was informed that there are no availble openings in any day care center. When she stated that her children had already

been accepted at the A.W.R.O. Day Care Center, she was informed as far as the Albany County Welfare Department was concerned it was not an approved day care facility and the County could not refer and place her children in that center. Plaintiff SHOULTZ's two minor children are still attending the A.W.R.O. Day Care Center.

18. On or about October, 1971 plaintiff MILNER applied for child care services for her 3 year old son San Jose Milner. She was at that time informed by officials of the Albany County Department of Social Services that although her son San Jose was eligible for such services none could be provided at that time because there was a waiting list consisting of some 300 children and that she would be called in the event of an opening.

That since October, 1971 this plaintiff has not been informed of any opening for child care services for her said child, by an official of the Albany County Welfare Department.

[12a]

On January 12, 1972 plaintiff MILNER applied to the A.W.R.O. Day Care Center, Inc. for placement of her said child San Jose Milner and San Jose Milner was accepted at the A.W.R.O. Day Care Center on January 12, 1972.

That on January 12, 1972 plaintiff MILNER, when she informed the Albany County Welfare Department about the opening in the A.W.R.O. Day Care Center, was told by officials of the Albany County Welfare Department that the A.W.R.O. Day Care Center, Inc. was not an approved day care facility and that no children could be referred or placed in it.

19. On January 11, 1972, Michael Nardolillo, Chairman pro tem of the Board of Directors of the ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. and plaintiff BODDIE requested defendant WYMAN

by telegran to intervene and compel the Albany County Welfare Department to honor the license issued, by referring children to the A.W.R.O. Day Care Center, Inc. and paying for these services at the said Center.

20. That the plaintiff ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. is suffering irreparable harm because of the actions of defendants SCHRECK and JAY and the inaction on the part of defendant WYMAN. There is no adequate remedy at law to rectify these injustices.

VII

STATEMENT OF CLAIMS FOR RELIEF

A. ON BEHALF OF PLAINTIFF ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC.

1. Defendants SCHRECK and JAY in failing and refusing to permit children to be referred to the A.W.R.O. Day Care Center, Inc. and defendant WYMAN in failing to use his power to supervise and enforce his department's rules and regulations in a uniform

[13a]

manner so as to compel defendants SCHRECK and JAY to utilize the A.W.R.O. Day Care Center, Inc. after a license was duly issued and to pay A.W.R.O. Day Care Center, Inc. for day care services it is prepared to render, have treated A.W.R.O. Day Care Center, Inc. differently and acted in a capricious, arbitrary and irrational manner, thereby depriving A.W.R.O. Day Care Center, Inc. of due process of law and equal protection of the laws in violation of the Fourteenth Amendment to the United State Constituiton.

2. Defendants SCHRECK and JAY have refused or failed to permit children to be referred to the A.W.R.O. licensed day care facility in order to inhibit A.W.R.O. members from speaking and associating with plaintiff CATHERINE BODDIE in violation of the rights guaranteed to the members of this corporate plaintiff by the First and Fourteenth Amendments to the United States Constitution.

3. Defendants SCHRECK and JAY in failing and refusing to provide or refer eligible children for day care services to the licensed A.W.R.O. Day Care Center, Inc. and defendant WYMAN in failing to use his powers of supervision and enforcement to compel them to obey his department's rules and regulations and the federal law rules and regulations in a uniform manner, have violated federal law, and the rules and regulations promulgated thereto, 42 U.S.C. §602(a) and 606(d); 45 C.F.R. §220.18, 220.2, 220.47, 220.51, 220.52, 220.55, 220.56 and 226.1(a) (5), in that New York State having opted for child care services as part of its State Welfare plan under Title IV Parts A and B of the Social Security Act, the Albany County Social Services Department cannot refuse to utilize the facilities of a licensed and approved day care center where

[14a]

there is a shortage of such facilities and there is a need for such facilities on the part of eligible children as alleged heretofore.

4. Defendants SCHRECK and JAY have acted illegally in failing and refusing to provide children eligible for day care services to the licensed A.W.

R.O. Day Care Center, Inc., in violation of New York State Social Services Law and the Rules and Regulations promulgated thereto because defendants do not approve of the qualifications of the Director, plaintiff CATHERINE BODDIE. Only the New York State Board of Social Welfare under Article XVII Section 2 of the New York State Constitution, New York State Executive Law Section 747, is empowered to issue certificates of approval to operate and incorporate day care centers. New York State Social Services Law, Sections 17 and 390, 18 NYCRR §8.3(b), §12.4 empowers only the New York State Department of Social Services to issue permits to operate day care centers. Defendants SCHRECK and JAY have neither the power nor the jurisdiction to overrule the action of the New York State Department of Social Services as aforesaid.

B. ON BEHALF OF PLAINTIFF BODDIE

1. Defendant SCHRECK and JAY in failing and refusing to permit eligible children to be referred to the A.W.R.O. Day Care Center, Inc. for compensible day care services on the ground that they disapprove of plaintiff BODDIE's qualifications to be Director of a day care center and defendant WYMAN in failing to use his power to supervise and enforce his department's rules and regulations in a uniform manner, and to enforce the Social Service Law of New York State so as to compel defendants SCHRECK and JAY to utilize the A.W.R.O. Day Care Center, Inc. after a license was duly issued to the said Day Care Center with plaintiff

CATHERINE BODDIE as Director, have treated plaintiff BODDIE differently from other licensed day care center directors and have acted in an arbitrary, capricious and irrational manner and have thereby deprived plaintiff BODDIE of due process of law and equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

2. Defendants SCHRECK and JAY by their illegal action of failing and refusing to refer eligible children to the licensed A.W.R.O. Day Care Center, Inc. as long as plaintiff BODDIE is the Director of the said A.W.R.O. Day Care Center insofar as they are retaliating against her for her prior exercise of First Amendment rights of speech, assembly, association and redress of grievances are violating her rights under the First and Fourteenth Amendments to the United State Constitution.

C. ON BEHALF OF PLAINTIFFS SHOULTZ and MILNER, THEIR MINOR CHILDREN, AND ALL OTHERS SIMILARLY SITUATED

1. Defendants SCHRECK and JAY by failing and refusing to provide children who are eligible for day care services to the licensed A.W.R.O. Day Care Center, Inc. and defendant WYMAN in refusing to supervise the county officials, have violated federal law, the rules and regulations promulgated thereto, 42 U.S.C. §§602(a) and 606(d), 45 C.F.R. §§220.18, 220.2, 220.47, 220.51, 220.52, 220.55, 220.56 and 226.1(a)(5) in that New York State having opted for child care services as part of its State Welfare Plan

under Title IV Parts A and B of the Social Security Act, defendants SCHRECK and JAY by refusing to utilize the facilities of a day care center licensed by the State of New York when there is a shortage of such facilities as specified hereto fore, are denying plaintiffs SHOULTZ and MILNER, their minor children and all others similarly situated of their right to services under federal law.

[16a]

2. Defendants SCHRECK and JAY in failing and refusing to provide children eligible for day care services to the licensed A.W.R.O. Day Care Center, Inc. and defendant WYMAN in failing to use his power to enforce his department's rules and regulations so as to compel defendants SCHRECK and JAY to place and refer eligible children, who need day care services to A.W.R.O. Day Care Center, Inc. are in violation of the New York State Social Services Law and the rules and regulations promuglated thereto. New York State Social Services Law Section 410 states that "day care shall be provided to eligible children when such care is needed"; 18 NYCRR §369.10(b) provides that "day care shall be provided children directly by Social Services officials, or by purchase of such service..." when the care is needed or is in the best interest of the child or parent; 18 NYCRR §8.18 states that "each social services district shall provide day care for children determined to be eligible therefore in accordance with State and Federal requirements." Plaintiffs are being deprived of their right to day care under New York State Law, and the rules and regulations promulgated thereto.

[17a]

WHEREFORE, PLAINTIFFS ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. and CATHERINE BODDIE respectfully pray on behalf of themselves and PLAINTIFFS ADREANA SHOULTZ and GLADYS MILNER pray on behalf of themselves, their minor children, and all other persons similarly situated, that this Court grant a temporary restraining order, a preliminary injunction, and a permanent injunction;

A. Enjoining defendants SCHRECK and JAY, their agents and employees, and all those acting in concert with them from:

1. Refusing, failing, neglecting or declining to send children to the A.W.R.O. Day Care Center, Inc., for day care service, who are eligible for such services.

2. Refusing, failing, neglecting or declining to permit, allow and authorize A.W.R.O. Day Care Center, Inc. to provide day care service to eligible children recruited by the staff or by the supporters of the said corporate plaintiff.

3. Refusing, failing, neglecting or declining to pay A.W.R.O. Day Care Center, Inc. for day care services provided to all eligible children which the Corporate plaintiff is authorized by its license to care for, regardless of the manner in which the children or any of them were recruited or referred to the said Corporate plaintiff.

B. Enjoining defendant WYMAN, his agents and employees and all those acting in concert with him from failing or neglecting and continuing to fail or neglect to adopt, establish and implement methods to assure that the Albany County

Department of Social Services will honor the license issued by the New York State Department of Social Services to plaintiff ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC., will make payment to ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. in accordance with the New York State Social Services Law, Rules and Regulations,

[18a]

and that there will be a uniform and rational policy for utilization and purchase of day care services for eligible persons in Albany County.

PLAINTIFF ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. respectfully prays this Court grant judgment declaring:

A. ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. is entitled to receive referrals of children eligible for day care services from:

1. The Albany County Department of Social Services.
2. The Staff of the A.W.R.O. Day Care Center, Inc.
3. Supporters of the A.W.R.O. Day Care Center, Inc.

B. ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. is entitled to be paid by Albany County Department of Social Services in accordance with the approved rate for day care services previously rendered.

C. ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. is entitled to be paid by Albany County Department of Social Services in accordance with the approved rate for day care services to be rendered and which it stands ready, willing and able to perform.

PLAINTIFF CATHERINE BODDIE respectfully prays this Court grant judgment declaring:

> ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. is entitled not to be discriminated against because of plaintiff CATHERINE BODDIE's directorship at the A. W. R. O. Day Care Center.

[19a]

PLAINTIFFS ADREANA SHOULTZ and GLADYS MILNER, on behalf of themselves, their minor children, and all others similarly situated, respectfully pray this Court grant judgment declaring:

> Eligible children in Albany County are entitled to placement in a licensed day care center of their parent's choice, which includes the licensed ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC., and the day care center chosen by the parent is entitled to be paid by the Albany County Department of Social Services for services rendered.

PLAINTIFF, ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. respectfully prays that this Court grant judgment in favor of ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. and against defendants SCHRECK and JAY in the sum of $38,324.00, with interest from January 3, 1972 and with the costs and disbursements of this action.

DATED: JANUARY 13, 1972
ALBANY, NEW YORK

MARILYN JOAN BERGER

Marilyn Joan Berger, of Counsel
Joel F. Spitzer, of Counsel
Paul R. Lichterman, Of Counsel
Legal Aid Society of Albany, Inc.
Attorney for Plaintiffs
Office and P. O. Address
79 North Pearl Street
Albany, New York 12207
Telephone: (518) 462-6765

[20a thru 23a]

The verifications set out at pages 20a through 23a are omitted.

Exhibit A — Letter, dated 9-1-71 annexed to Complaint.

[24a]

DEPARTMENT OF SOCIAL SERVICES

COUNTY OF ALBANY

40 Howard Street, Albany, New York 12207

Telephone 465-5271

Francis C. Schreck
Commissioner
Anthony C. Jay
Deputy Commissioner

September 1, 1971

Miss Sharon Conrad, Director
Albany Welfare Rights Organization Day Care Center,
15 Trinity Place,
Albany, New York.

Dear Miss Conrad:

We are pleased to include your proposed 1972 budget for a day care center in our estimates to be submitted to the County Legislature. Your request to service thirty-three (33) children at $36.85 weekly per child from January 1-December 31, 1972 is accepted upon approval of your facility by the New York State Department of Social Services.

Best wishes in your application for a State License.

Very truly yours,

s/ Francis C. Schreck

FRANCIS C. SCHRECK
Commissioner.

FCS:MZ

Exhibit B — Copy of State Board of Social Welfare Approval annexed to Complaint.

[25a]

State of New York
STATE BOARD OF SOCIAL WELFARE
Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the twentieth day of December, 1971, due inquiry and investigation having been made, the Board approved the request of ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. to operate one day care center at 15 Trinity Place, City and County of Albany, New York.

IN WITNESS WHEREOF, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board to be hereunto affixed, this twenty-first day of December, in the year one thousand nine hundred and seventy-one.

(SEAL)

s/ GEORGE W. CHESTER
Executive Director

Exhibit B — Copy of State Board of Social Welfare Approval annexed to Complaint.

[26a]

State of New York
STATE BOARD OF SOCIAL WELFARE
Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the twentieth day of December, 1971, due inquiry and investigation having been made, the Board approved the proposed certificate of incorporation of ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC. pursuant to Section 747 of the Executive Law and Section 404 of the Not-for-Profit Corporation Law of the State of New York.

IN WITNESS WHEREOF, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board to be hereunto affixed, this twenty-first day of December, in the year one thousand nine hundred and seventy-one.

(SEAL)

s/ GEORGE W. CHESTER
Executive Director

Exhibit C — Permit annexed to Complaint.

[27a]

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES
ALBANY AREA OFFICE
74-76 State Street
Albany, New York 12207

George K. Wyman
Commissioner

Clifford Tallcott
Deputy Commissioner

Seymour Katz
Area Director

January 5, 1972

Mrs. Catherine Boddie, Director
Albany Welfare Rights Organization
Day Care Center, Inc.
15 Trinity Place
Albany, New York

Dear Mrs. Boddie:

Enclosed is your day care permit for twenty (20) children. If you have any additional questions, please feel free to contact us.

Good luck in your endeavor.

Sincerely yours,

Berta M. Brewster
Acting Area Director

s/ TERRENCE W. BARTLETT

Terrence W. Bartlett
Supervising Social Services
Representative

TWB:dmm
Enc:

Exhibit C — Permit annexed to Complaint.

[28a]

Form D55-705 (Rev. 9/65)
(Formerly CW-115B)

PERMIT TO OPERATE A
DAY NURSERY
State of New York
Department of Social Services

Expires on
December 30,
1972

Number
4-277

Issued To
Albany Welfare Rights Organization Day Care Center, Inc.
Address (No. and Street or R. F. D.)
15 Trinity Place
City or Village
Albany, New York
County
Albany

New [xxx] Reopened [ ] Renewal [ ]
Change Address [ ] Change Capacity [ ]

This is to certify that the above-named is regarded as maintaining a suitable day nursery for the care of children and is hereby authorized to receive from parents or legal guardians and to provide day care, under the supervision of the State Department of Social Services, at the above address only, for not to exceed 20 children.

This permit is issued under the provisions of Section 390 of the Social Services Law, and expires on the date indicated above; subject, however, to prior revocation by the State Commissioner of Social Services, for cause.

This permit shall be accessible for examination. It is the Property of the State Department of Social Services and is to be returned when the permit expires or is revoked.

Date
Issued
December 31, 1971

STATE DEPARTMENT OF SOCIAL SERVICES
GEORGE K. WYMAN, Commissioner
By s/ Berta M. Brewster

Routing of Copies [1] Nursery [2] Area Office
[3] Bureau of Children's Institution Services

Exhibit D — Affidavit of Michael Nardolillo annexed to Complaint. [29a]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

THE ALBANY WELFARE RIGHTS ORGANIZATION DAY CARE CENTER, INC.; CATHERINE BODDIE; ADREANA SHOULTZ and GLADYS MILNER, Individually and on behalf of themselves and their minor children and all others similarly situated,

Plaintiffs,

-against-

FRANCIS SCHRECK, Individually and as Commissioner of the Albany County Department of Social Services; ANTHONY JAY, Individually and as Deputy Commissioner in the Albany County Department of Social Services; and GEORGE K. WYMAN, Individually and as Commissioner of the New York State Department of Social Services,

Defendants.

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

MICHAEL NARDOLILLO, being duly sworn, deposes and says:

1. He is the Executive Director of Trinity Institute, a non-profit community agency and is chairman pro tem of the Albany Welfare Rights Organization Day Care Center, Inc. Board of Directors.

2. That on January 6, 1972 at approximately 9:00 P.M. deponent telephoned defendant SCHRECK at his home to inquire why children were not being referred or placed in the licensed Albany Welfare Rights Organization Day Care Center, Inc.

Exhibit D — Affidavit of Michael Nardolillo annexed to Complaint.

3. That defendant SCHRECK answered deponent's question stating that as long as plaintiff CATHERINE BODDIE remained as the Executive Director that he would not refer nor place any children in the Albany Welfare Rights Organization Day Care Center, Inc.

4. That deponent then asked him what objection he had to plaintiff CATHERINE BODDIE as Executive Director of the Albany Welfare Rights Organization Day Care Center.

5. That defendant SCHRECK then stated to deponent that he did not feel she was qualified for the position as Executive Director of the Day Care Center and that his letter dated September 1, 1971 (Exhibit "A") was addressed to Sharon Conrad who was supposed to be director of the day care center and it was on that basis that the Albany Welfare Rights Organization Day Care Center was appropriated funds by the Albany County Legislature.

MICHAEL NARDOLILLO

SWORN TO BEFORE ME THIS
13th DAY OF JANUARY, 1972.

Marilyn Joan Berger
NOTARY PUBLIC

MARILYN JOAN BERGER
Notary Public in the State of New York
Qualified in Albany County
Commission Expires March 30, 19..
Notary Reg. No. 0256798